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June 6, 2007

State Water Resources Control Board
1001 I Street
Sacramento, California 95814



Attention: Song Her, Clerk to the Board

Re: June 19 Workshop to Receive Information Regarding Policy Direction on
Water Right Enforcement

Dear Members of the Board:

As an attorney who frequently represents numerous different clients with water-right issues, I am submitting this letter for the Board's June 19 workshop on water-right enforcement. Because several other attorneys already have submitted detailed comments for this workshop, this letter just highlights a few very important points for this workshop.

1. Any water-right enforcement policy that is adopted by the SWRCB should direct its staff to focus water-right enforcement actions on diversions that are having substantial, on-going adverse effects on the environment or the exercise of other water rights. Such a focused enforcement policy is necessary so that the very limited SWRCB staff resources that are available for enforcement actions can be focused where they will do the most good. It would be a mistake for the SWRCB to pursue enforcement actions against diverters that already have filed applications or petitions to obtain authorizations for their existing diversions, and that are diligently pursuing those applications and petitions. Where an existing diverter has filed an application or a petition to obtain authorization for an existing diversion, the SWRCB's focus should be on processing the application or petition, and not on penalizing the diverter for trying to obtain authorization for the diversion.

2. Parallel with any new water-right enforcement policy, the SWRCB should try to reduce the very large current backlogs in pending water-right applications and petitions. Actions to reduce these backlogs should include the following:

- a **Preparing and maintaining a complete database, available to the public on the SWRCB's website, that will allow the SWRCB and interested parties to objectively determine the causes of the backlogs and the SWRCB's progress in resolving the backlogs.** This database should contain the following information for all pending applications and petitions: (i) the date on which the application or petition was filed; (ii) the river system involved; (iii) the date of the public notice of the

application or petition; (iv) the number of protests filed; (v) the number of protests still unresolved; (vi) the type of CEQA compliance contemplated; (vii) the status of the CEQA compliance; (viii) the status of final action on application or petition.

The Division of Water Rights then can use this database to supplement the monthly information that it currently provides on numbers of pending water-right applications and petitions with more-detailed information and accountings that will show the SWRCB's progress in processing pending applications and petitions.

- b **Allowing applicants and petitioners to use any of the options in CEQA Guidelines section 15084, subdivision (d) for CEQA compliance.** Section 15084 specifies five options for preparing draft EIR's. These same options should be allowed for preparing CEQA negative declarations. By allowing applicants and petitioners to select which of these options to follow for CEQA compliance, the CEQA process for water-right applications and petitions will be much faster and more efficient, and not as much SWRCB staff time will be required for preparation of these documents.

Under any of these options, the SWRCB still would subject the draft CEQA document to its own review and analysis, as required by CEQA Guidelines, section 15084, subdivision (e), so the SWRCB's ultimate judgment and discretion under CEQA would be preserved.

- c **Adopting a regulation or policy specifying deadlines for Division of Water Rights staff to act during various stages of the water-right process.** These deadlines should include deadlines for staff to: (i) issue the public notice of the application or petition; (ii) comment on the draft CEQA document; (iii) circulate the draft CEQA document, where SWRCB is the lead agency; (iv) take final action on the CEQA document and the application or petition, where all protests have been resolved; and (v) set a hearing on the CEQA document and the application or petition, where all protests have not been resolved.

Thank you for providing the opportunity to make these comments

Very truly yours,



ALAN B. LILLY